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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/814,155

04/01/2004

Barry W. Townscnd

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08/17/2006

ANTONELLI, TERRY, STOUT & KRAUS, LLP  
1300 NORTH SEVENTEENTH STREET  
SUITE 1800  
ARLINGTON, VA 22209-3873

EXAMINER

BLANCO, JAVIER G

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                 |  |
|------------------------------|-------------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/814,155 | Applicant(s)<br>TOWNSEND ET AL. |  |
|                              | Examiner<br>Javier G. Blanco  | Art Unit<br>3738                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-13, 15, 16 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) 3, 12 and 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-11, 13, 15, 16, 18, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/16/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants' amendment of claims 1, 6, 7, 10, and 15 in the reply filed on May 24, 2006 is acknowledged.
2. Applicants' cancellation of claims 4, 5, 14, and 17 in the reply filed on May 24, 2006 is acknowledged.

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on May 24, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6,562,075; and U.S. Patent Applications: 10/263,795; 10/408,107; 10/473,680; and 10/814,260 as been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Objections***

4. Claim 15 is objected to because of the following informality: please substitute "the shank" (see line 2) with --the resilient member--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

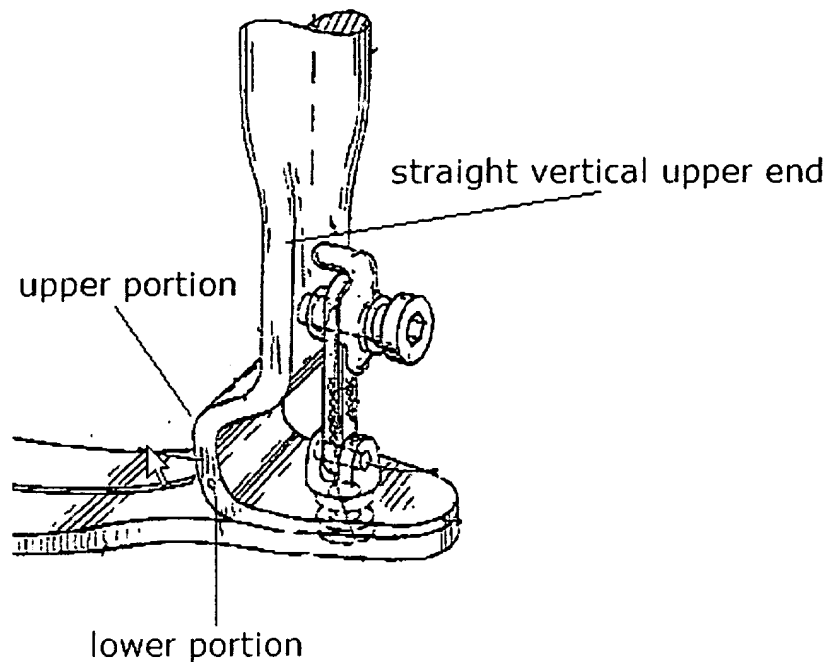
Art Unit: 3738

6. Claims 1, 2, 6-11, 13, 15, 16, 18, 23, and 24 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Atkinson et al. (US PG Pub No 2002/0087216 A1; cited in Applicants' IDS).

Referring to Figures 8, 9, 11, 13, 14, 19, and 29, Atkinson et al. disclose a prosthetic foot comprising (i) a longitudinally extending foot keel; and (ii) a resilient, monolithically formed shank extending upwardly from the foot keel by way of an anterior facing continuous convexly curved surface with increasing radius of curvature to form a lower ankle joint area portion and an upper resilient shank portion for connection with a lower extremity prosthetic structured secured to a person's residual limb; wherein the lower portion and the upper portion of the shank extending upwardly from the foot keel are anterior facing convexly curved; and wherein the shank and at least a portion of the foot keel are monolithically formed (i.e., "cast or formed from a single piece, element, or structure", as disclosed in paragraph 0082). The shank and foot keel are formed of metal or plastic (see paragraphs 0044 and 0047).

### ***Response to Arguments***

7. Applicants' arguments filed May 24, 2006 have been fully considered but they are not persuasive. The Applicants argue that Atkinson et al. (US PG Pub No 2002/0087216 A1) does not disclose "the lower portion and the upper portion of the shank extending upwardly from the foot keel are anterior facing convexly curved". The Examiner respectfully disagrees. As seen below, Atkinson et al. prosthetic foot comprises an upper portion and a lower portion of the shank, both anterior facing continuous convexly curved. The term "portion" is broadly interpreted. The shank has a straight vertical upper end (emphasis added), as claimed in claim 8.



8. Claims 1, 2, 6-11, 13, 15, 16, 18, and 23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fikes et al. (US 4,911,724; cited in Applicants' IDS).

Referring to Figures 2A and 3, Fikes et al. disclose a prosthetic foot comprising (i) a longitudinally extending foot keel 12; and (ii) a resilient, monolithically formed shank 11/14 extending upwardly from the foot keel by way of an anterior facing continuous convexly curved surface with increasing radius of curvature to form a lower ankle joint area portion and an upper resilient shank portion for connection with a lower extremity prosthetic structured secured to a person's residual limb; wherein the lower portion and the upper portion of the shank extending upwardly from the foot keel are anterior facing convexly curved; and wherein the shank and at least a portion of the foot keel are monolithically formed.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (9:30 a.m.-7:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGB



August 9, 2006



David H. Willse  
Primary Examiner